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DIRECT DIAL: 202-530-1482
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January 23, 2013

Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: Application No. 18500 – 2914 Sherman Ave, NW (Square 2852, Lot 807)
Prehearing Statement of the Applicant

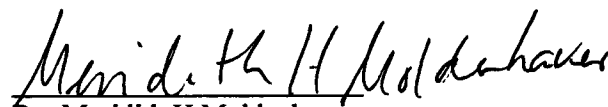
Honorable Members of the Board:

On behalf of Applicant 2914 Sherman, LLC, enclosed please find the prehearing statement for the above-referenced application. The application is scheduled to be heard before the Board of Zoning Adjustment on February 5, 2013.

Under 11 DCMR §3113.8, “no later than fourteen (14) days before the date of the hearing for the application, the applicant shall file any additional statement, information, briefs, reports, (including reports of statements of expert and other witnesses), plans, or other material that the applicant may wish to offer into evidence at the hearing.” Due to the Martin Luther King, Jr. Day holiday weekend, the Prehearing Statement is being submitted late. Under 11 DCMR §3100.5, the Board “may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.” Accordingly, the Applicant is respectfully requesting the Board to waive their requirements and accept the attached Prehearing Statement based on lack of prejudice to the public.

Thank you for your attention to this matter.

Sincerely,
GRIFFIN & MURPHY, LLP


By: Meridith H. Moldenhauer

Enclosures:

Cc: Advisory Neighborhood Commission 1A
c/o Thomas Boisvert, Chair (via email)
Dotti Love Wade, SMD Representative ANC 1A11 (via email)
Stephen Gyor, Office of Planning (via email)

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18500

EXHIBIT NO. 32

Board of Zoning Adjustment
District of Columbia
CASE NO. 18500
EXHIBIT NO. 32

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Executive Summary

Case No. 18500

Site Description

Address: 2914 Sherman Ave, NW
Square/Lot: Sq. 2852, Lot 807

Zoning: R-4

Existing: 18-unit Apt. Building

Historic District: None

Adjacent Properties:

- Pepco Substation
- 2918 Sherman Ave, NW

Public Transportation:

- Metro:
 - Columbia Heights
 - Georgia Ave-Petworth
- Metrobus:
 - Routes: 63, H1, H2, H3, H4
 - Stop: Sherman & Columbia
- Capital Bikeshare:
 - 11th St & Kenyon St
 - 14th St & Harvard St
 - Columbia Rd & Georgia
- Car Sharing:
 - Zipcar: 10 spaces
 - Car2Go

Cases:

- *Palmer v. D.C. BZA*
- *Russell v. D.C. BZA*
- *Tyler, et. al. v. D.C. BZA*

Project Description

Applicant	2914 Sherman, LLC
Proposal	20-unit Apt. Building
Relief Sought	• Nonconforming structure requirements (2001.3): ➢ Lot Occupancy (772.1) ➢ Open Courts (406.1) ➢ Lot Area (401.11) • Story Requirement (400.1) • Parking (2101.1)
Variance Standard	Exceptional Circumstance: Confluence of Factors 1. Large lot size 2. 7 years Vacancy Caused Excessive Deterioration 3. Noncompliance of Existing Structure 4. Inefficient layout of Existing Structure Strict Application Results in Practical Difficulty: • Compliance would require Applicant to tear down a large portion of the existing structure. • Economic infeasibility due to costly demolition and loss of square footage required for compliance. • Applicant would suffer a practical difficulty in reasonably developing and marketing a project that complies with the Zoning Regulations. No Detriment to Public Good: • Renovates and activates vacant, underutilized space • Provides needed addition to housing supply • Limited residential density due to Pepco Station

Comments of District Agencies and Community:

- Support from ANC 1A
- 3 Letters of Support from Neighbors

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF
2914 SHERMAN, LLC**

**BZA APPLICATION NO. 18500
HEARING DATE: FEBRUARY 5, 2013**

PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of 2914 Sherman, LLC (the “Applicant”), the owner of property located at 2914 Sherman Avenue NW, Lot 807 in Square 2852 (the “Property”), in support of its application for variance relief, pursuant to 11 DCMR §3103.2, from (i) the nonconforming structure requirements (§2001.3) regarding lot occupancy (§403.2), open court (§406.1), and lot area (§401.11) requirements; (ii) the story requirement (§400.1); and (iii) the parking requirement (§2101.1) to allow the Applicant to convert a three-story, 18-unit apartment building to a four-story, 20-unit apartment building in the R-4 District at premises 2914 Sherman Avenue NW, Washington DC.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant the variance requested herein pursuant to §3103.2 of the Zoning Regulations.

III. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A: Survey

Exhibit B: ANC Letter in Support

Exhibit C: Neighbor Letters in Support

IV. APPLICANT MEETS BURDEN OF PROOF FOR VARIANCE RELIEF

The Board is authorized to grant an area variance where it finds that the Applicant fulfills the three-prong area variance standard. As described in the initial application, supplemented in this Prehearing Statement, and as will be further explained at the public hearing, all three prongs of the area variance test are satisfied.

A. The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exceptional Situation or Condition.

The phrase “exceptional situation or condition” in the above-referenced variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). As stated in the initial submission, the Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the large size of the lot, (2) seven years of vacancy causing deterioration of the existing structure, (3) the nonconformities of the existing structure, and (4) the inefficient layout of the existing structure.

B. Strict Application of the Zoning Regulations would Result in Practical Difficulty

The Applicant has discussed in great detail the various ways that strict application of the Zoning Regulations would result in practical difficulty to the Applicant in the initial submission. At this point, the Applicant seeks only to clarify the exceptional situation and practical difficulty due to (1) the financial infeasibility of a matter of right renovation and (2) the practical difficulty of alternative renovations.

1. Financial Infeasibility

The practical difficulty associated with this project is due, in part, to the financial infeasibility of renovating the dilapidated existing structure and reconfiguring its inefficient existing floor plan. In the context of an area variance, practical difficulties can be demonstrated by showing that without a variance the property will not generate a “fair and reasonable return.” Under *Palmer v. Bd. of Zoning Adjustment for the District of Columbia*, 287 A.2d 535 (D.C. 1972), the variance procedure has a number of purposes, one of which is “prevent[ing] usable land from remaining idle.” The Court in *Palmer* goes on to say that to demonstrate hardship based on economic infeasibility, an applicant must prove that the property cannot

be “put to any conforming use with a **fair and reasonable return** arising out of the ownership thereof.” *Id* at 541-42 (emphasis added). In *Russell v. District of Columbia Bd. of Zoning Adjustment*, 402 A.2d 1231 (D.C. 1979), the court distinguished an applicant seeking a fair and reasonable return from an “applicant merely seeking the most profitable use for his land.” *Id* at 1236. It is for the Board to decide, on a case-by-case basis, on which side of this line an application falls. *Tyler v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992). Here, the Applicant seeks to return an apartment building that has been vacant and an eye sore for over seven years to a productive housing resource for the community.

In this instance, the Applicant has demonstrated through a detailed Construction Budget and Profit and Loss Analysis that the renovation proposed provides a fair and reasonable return while a renovation complaint with the Zoning Regulations would result in a substantial loss. Due to the dilapidated condition of the existing, long-vacant structure, significant renovation beyond the existing building envelope is required to bring the structure to market. Thus, as a result of financial infeasibility, strict application of the Zoning Regulations would result in a practical difficulty.

2. Practical Difficulty of Alternative Renovations

The Applicant’s proposed project seeks to renovate the existing structure and add an additional floor. The proposal will increase the height but leave the footprint of the existing structure unchanged. While alternative renovations, such as building into the courts or building into the rear yard, would provide additional square footage without the need for a height variance, neither alternative is logistically or financially feasible. Both alternatives (1) require the Applicant to finance a significant amount new construction costs for a very limited increase in square footage and (2) simply replace the need for one variance with the need for another.

First, both alternatives require the Applicant to finance a significant amount new construction costs for a very limited increase in square footage. The existing T-shaped structure creates two long, narrow nonconforming open courts on either side of the structure and a nonconforming rear yard (see

Survey, attached hereto as Exhibit A). Building into the courts or building into the rear yard requires removing and replacing exterior walls to obtain only a small increase in square footage. Each court is roughly 730 square feet, or 12% of the total lot. The rear yard behind the existing structure is roughly 290 square feet, or 5% of the total lot. Thus, for both alternatives the existing walls would need to be demolished and replaced at great expense to the Applicant to increase lot occupancy by only a fraction. In addition, building into the rear yard does not address the inefficient layout because it only serves to expand the two rear units rather than redevelop the entire building.

Second, both alternatives merely replace the need for one variance with the need for others. Under §2001.3, an enlargement or addition may be made to a nonconforming structure as a matter of right only if the addition or enlargement itself conforms to use and structure requirements and the nonconforming aspect is not expanded. The existing structure is nonconforming as to lot occupancy; thus, building into either court or the rear yard necessarily means expanding a nonconforming aspect. In addition, building into the rear yard would also require a variance to decrease the size of a rear yard that is currently permitted as an existing nonconformity. In other words, expanding the footprint rather than increasing the height would simply replace the need for one variance with the need for others.

In sum, potential alternatives to those proposed by the Applicant are not possible because the alternatives require the Applicant to finance a significant amount new construction costs for a very limited increase in square footage. In addition, the various alternatives simply replace the need for one variance with the need for another. Moreover, the proposed height conforms aesthetically to the width of Sherman Avenue and mirrors the Property's twin structure located at 2922 Sherman Avenue, NW. From a sustainable building practices perspective, demolition and replacement of large walls for limited gain is an unnecessary waste of resources. Thus, building into the courts or rear yard simply does not justify the time, expense, inconvenience, and waste associated with such a renovation.

For this reason, the Applicant asks that the Board approve the application as submitted.

C. No Detriment to Public Good or Inconsistency with Zone Plan

The continued use of the existing structure will not cause detriment to the public good or be inconsistent with the Zone Plan. On January 8, the Applicant held an Information Session open to any members of the community who were interested in hearing more about the application. No opposition was voiced at the Information Session. On January 9, 2013, the Applicant presented the Application to Advisory Neighborhood Commission ("ANC") 1A (attached hereto as Exhibit B). At the meeting, ANC 1A voted to recommend approval of the application to the BZA. Additionally, residents that live in the immediate area have proffered 3 letters in support of this application (attached hereto as Exhibit C).

V. WITNESSES

The following witnesses will appear on behalf of the Applicant:

1. Sia Madani, President of Madison Investments on behalf of the Applicant; and
2. Javid Shirazi, Architect on behalf of JES architecture.

VI. CONCLUSION

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings in this case, we hereby submit that the application meets the requirements for area variance relief. We look forward to presenting our case to the Board on February 5, 2013.

Sincerely,
GRIFFIN & MURPHY, LLP

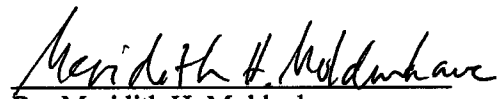

By: Meredith H. Moldenhauer

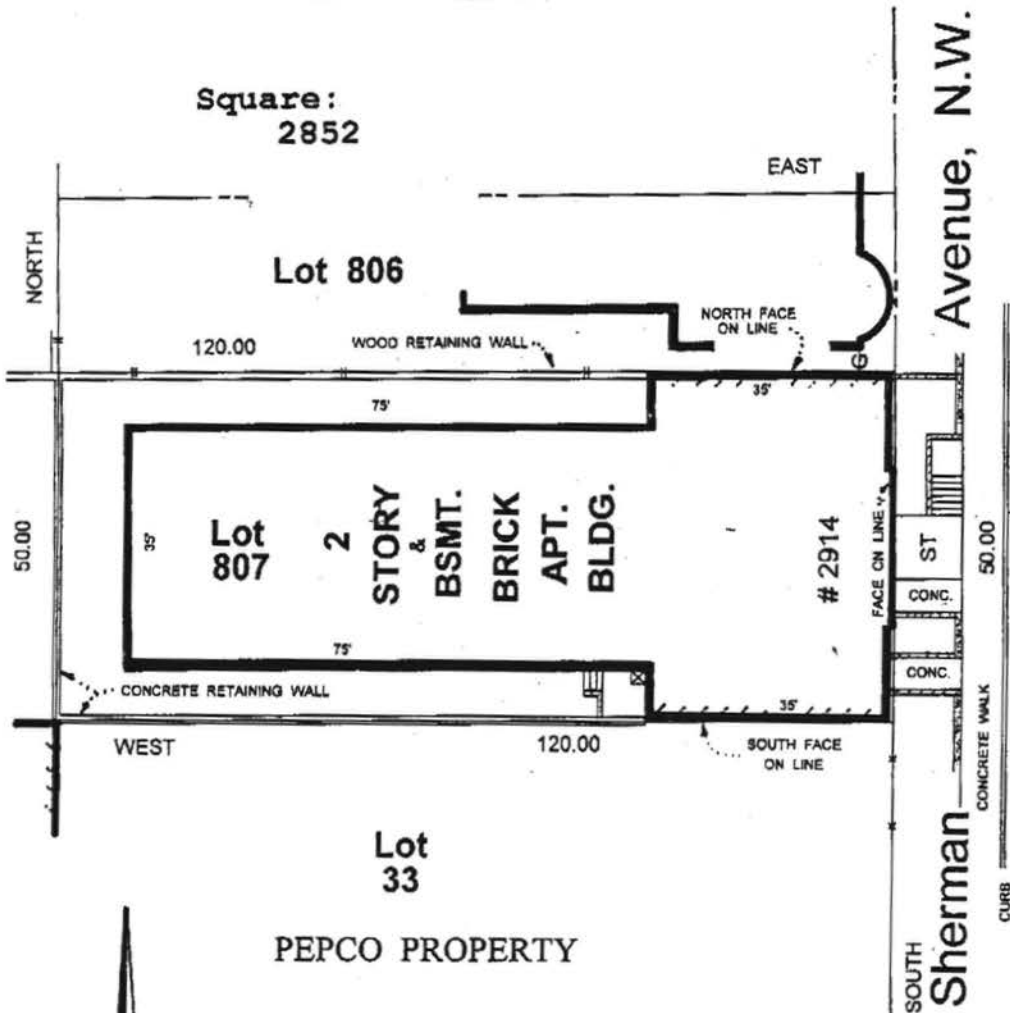
Exhibit A

Landtech Associates Inc.

10260 Old Columbia Road Rivers Center-Suite J
Columbia, MD 21046

Phone: 410-290-8099 Fax: 410-290-8299

NOTE: NOT TO BE USED FOR ISSUANCE OF PERMITS



Location Survey:

2914 Sherman Avenue, N.W.

Washington, D.C.

LOT:	807	SQUARE:	2852
LIBER:	Per Assessor's	FOLIO:	Records
DATE:	08/24/11	SCALE:	1" = 20'
CASE NO:	11 - 0457	FILE NO.:	LT 2111694

Certification : I hereby certify that the position of all existing visible improvements on the above described property has been carefully established in relation to the apparent title lines and that, unless otherwise shown, there are no visible encroachments. This is not a property line survey and should not be used for the erection of fences or any other improvements or for permit applications. (No title report furnished)

Braden A. Rogers

BRADEN A. ROGERS - D.C. Land Surveyor Lic. LS990374

Exhibit B



BEFORE THE ZONING COMMISSION AND
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



FORM 129 – ADVISORY NEIGHBORHOOD COMMISSION (ANC) REPORT

Before completing this form, please review the instructions on the reverse side.

Pursuant to §§ 3012.5 and 3115.1 of Title 11 DCMR Zoning Regulations, the written report of the Advisory Neighborhood Commission (ANC) shall contain the following information:

IDENTIFICATION OF APPEAL, PETITION, OR APPLICATION:

Case No.:	18500	Case Name:	2914 Sherman, LLC
Address or Square/Lot(s) of Property:	Square 2852, Lot 807		
Relief Requested:	variance from the maximum story requirements; variance from the nonconforming structure, and a variance from the off-street parking requirements		

ANC MEETING INFORMATION

Date of ANC Public Meeting:	0	9	/	0	1	/	1	3	Was proper notice given?:	Yes	☒	No	☐
Description of how notice was given:	Area listservs, ANC 1A Web site, Twitter, etc.												

Number of members that constitutes a quorum:	7	Number of members present at the meeting:	10
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MATERIAL SUBSTANCE

The issues and concerns of the ANC about the appeal, petition, or application as related to the standards of the Zoning Regulations against which the appeal, petition, or application must be judged (*a separate sheet of paper may be used*):

The recommendation, if any, of the ANC as to the disposition of the appeal, petition, or application (*a separate sheet of paper may be used*):

ANC 1A recommends approval of the application.

AUTHORIZATION

ANC	1	A	Recorded vote on the motion to adopt the report (i.e. 4-1-1):	6-3-1	
Name of the person authorized by the ANC to present the report:			Kent Boese		
Name of the Chairperson or Vice-Chairperson authorized to sign the report:			Thomas Boisvert		
Signature of Chairperson/ Vice-Chairperson:		Thomas Boisvert		Date:	Jan. 9, 2013

ANY APPLICATION THAT IS FOUND TO BE INCOMPLETE MAY NOT BE ACCORDED "GREAT WEIGHT" PURSUANT TO
11 DCMR §§ 3012 AND 3115.

Exhibit C

Date: 1/8/13

Board of Zoning Adjustment
441 4th Street N.W.
Suite 210S
Washington, DC 20001

Re: Letter in Support of Application No. 18500 – 2914 Sherman Avenue, NW

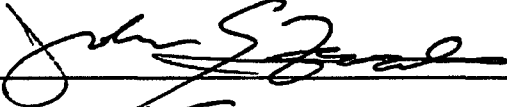
Dear Members of the Board:

I am writing to express my support for 2914 Sherman, LLC's application for zoning relief at 2914 Sherman Avenue, NW to convert a three-story, 18-unit apartment building to a four-story, 20-unit apartment building. I urge the Board to approve the application as proposed.

The plans for the applicant's proposed project have been explained to me. The proposed project will not have a substantially adverse effect on the use or enjoyment of our nearby home. Nor will it affect our light, air, or privacy. The project is comparable to other projects in our immediate vicinity, and will not visually intrude upon the character, scale, or pattern of the houses in our neighborhood.

Thank you for the opportunity to provide feedback.

Sincerely,

 (Signature)

Name: JOHN ZAVALES

Address: 3035 SHERMAN AVE, NW
WASHINGTON, DC 20008

Date: 01/08/13

Board of Zoning Adjustment
441 4th Street N.W.
Suite 210S
Washington, DC 20001

Re: Letter in Support of Application No. 18500 – 2914 Sherman Avenue, NW

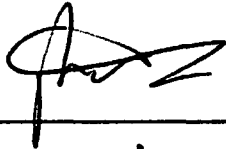
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Thank you for the opportunity to provide feedback.

Sincerely,



01/08/13

(Signature)

Name:

ZIKUN MENG

Address:

3112 Sherman Ave, NW

Washington, DC

20010

Date: 1/8/2013

Board of Zoning Adjustment
441 4th Street N.W.
Suite 210S
Washington, DC 20001

Re: Letter in Support of Application No. 18500 – 2914 Sherman Avenue, NW

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Thank you for the opportunity to provide feedback.

Sincerely,

 (Signature)

Name:

Reema Mehta

Address:

3112 Sherman Ave NW
Washington, DC 20010